



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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April 16, 2012

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name and title.

### PUBLIC HEALTH INSPECTIONS

At the Board of Supervisors' meeting held March 6, 2012, Supervisor Yaroslavsky requested that we review the following issues raised by Panagiotis Theodoropoulos (Dr. Theodoropoulos), during the Public Comment period: 1) initial fees charged for public health inspection of temporary food booths at certified farmers markets (CFMs) were excessive; and 2) revised fees are still excessive based on the staff time that it takes to conduct an inspection and when compared to the fees charged by other counties.

In response to this inquiry, we worked with the Department of Public Health (DPH) and the Office of County Counsel (County Counsel).

### BACKGROUND

Originally, CFMs were a venue for farmers to sell their crops, such as eggs, fruits, and vegetables, to the public. At the time, food vendors operated occasionally and thus were considered to be temporary "food preparation" booths and were permitted accordingly. However, as CFMs were held more frequently and offered an increasing variety of fare beyond simply crops, it became evident that the fee structure was not evolving with the changing industry, particularly with respect to food vendors conducting business at multiple CFMs.

*"To Enrich Lives Through Effective And Caring Service"*

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Typically, fee increases were proposed by DPH, and approved by your Board, on an annual basis. Adjustments were based upon changes within DPH's Environmental Health (EH) Division's total operation costs. The costs were spread over all health permit and license fee categories uniformly. At the time of the last fee increase, for fiscal year (FY) 2007-08, it was determined that a rate analysis should be conducted prior to assessing another fee increase. On July 22, 2008, our office reported to your Board that an evaluation of EH fees determined that a fee increase was not necessary for FY 2008-09 and that a rate analysis would be conducted.

An independent consulting firm was selected via the Auditor-Controller's Master Agreement process in April 2010 to develop a methodology for establishing health permit fees. The resulting methodology allowed DPH to determine fees consistent with actual costs and a revised ordinance was originally proposed by DPH on April 19, 2011. At the time, your Board instructed DPH to conduct an outreach effort to affected parties and to recommend improvements to the quality of service to permit holders. An extensive outreach effort was conducted, services were added to meet changing customer needs, and a revised fee structure was proposed in July 2011. In August 2011, the Board adopted DPH's recommendations to reduce public health fees, effective September 1, 2011, for many categories of fee payers, including temporary food booth operators, which was based on the new methodology.

## **INITIAL FEE STRUCTURE**

Beginning in 2008, DPH started receiving numerous inquiries from Dr. Theodoropoulos regarding the high permit fees for temporary food preparation booths. DPH evaluated his food booth operation, and because of the relatively low risk associated with sampling prepackaged foods, DPH temporarily combined two permit categories that were available at the time. This resulted in a reduction of Dr. Theodoropoulos' overall fees for his multiple CFM operations. This temporary solution of using a permit for "prepackaged food" along with a separate permit for "food demonstrator" (i.e., sampling) was determined to be a reasonable, alternative method of permitting this type of operation, pending the results of the independent study mentioned above.

Dr. Theodoropoulos' position is that the initial fee was excessive as evidenced by the fact that fees have been adjusted downward. As noted, initial fees were determined by spreading costs over all license and permit fee categories and therefore did not reflect whether the costs for specific categories had fluctuated. This fee setting methodology, while different from the current methodology, was both reasonable and permissible as the law does not require that fees be calculated proportionately on an individual basis. Dr. Theodoropoulos has filed a claim for a refund of the difference between the former

and current rates since 2008. The claim was filed on his behalf and others similarly situated. Accordingly, in consultation with County Counsel, Dr. Theodoropoulos' claim for a refund has been denied.

## **INSPECTION TIME AND FEE COMPARISON**

The second component of Dr. Theodoropoulos' claim is that the revised fees are still excessive based on the staff time that it takes to conduct an inspection and when such fees are compared to those charged by other counties.

The revised fees established by your Board, which took effect September 1, 2011, instituted three new annual permit categories for temporary food booths at CFMs. Previously, operators of temporary food booths at CFMs were required to obtain a new temporary permit every 90 days. Under the new methodology, the fees for these categories are based on the food safety risks associated with the activity and the number of annual inspections necessitated by the risk. Typically, the higher the food safety risk of a temporary food booth, the longer and more complex the inspection. A breakdown of inspection times for each type of temporary food booth at CFMs are noted in Attachment A.

As to Dr. Theodoropoulos' comments that the Torrance CFM should only take 3 or 4 hours to inspect, it is important to note that CFMs usually operate multiple days per week. Accordingly, EH's inspections of CFMs may occur on multiple days in order to ensure that every booth is inspected. The total time to inspect the Torrance CFM also varies depending on the type and number of temporary food booths, as well as violations observed. Inspections are conducted of all booths within the hours of operation over one or more days and may include multiple inspectors.

Other jurisdictions were contacted as to their fees for temporary food booths, for prepackaged and unpackaged food, and Attachment B provides a list of the noted fees. The fee rate in Los Angeles County for *"temporary food booth at certified farmer's market – annual, prepackaged with food sampling"* (i.e. such as Dr. Theodoropoulos' operation) is \$182. It should be noted that the surveyed jurisdictions do not have such a fee category; however, the fees included in the attachment are an approximation based on similar fees. For prepackaged food, annual permit fees for temporary booths range from "no fee" for non-potentially hazardous food in Ventura County to \$1,038 in San Francisco, compared to \$143 in Los Angeles County. For unpackaged food, annual permit fees range from \$153 in Orange County to \$1,332 in Alameda County, compared to \$441 in Los Angeles County. Based on this review, the fees charged in Los Angeles County are within the range of fees charged by comparable jurisdictions.

## CONCLUSION

Based on its extensive independent study, DPH proposed an alternative to its public health inspection fee structure which then more closely aligned fees with the actual cost of regulatory services provided to each category of fee payers. Your Board adopted new fee rates effective September 1, 2011. For some categories, the rates increased, while for others like for Dr. Theodoropoulos, the rates decreased.

Our findings indicated that the County's initial and revised fee setting methodologies, while different, are both appropriate and permissible under the law. Additionally, the time to conduct inspections at temporary food booths at CFMs is consistent with the level of effort necessary to assess the associated food safety risks. Finally, a comparison of public health permit fees revealed that Los Angeles County fees for temporary food booths are well within the range of fees charged by other jurisdictions.

If you have any questions regarding this matter, please contact Mr. Angelo Bellomo, DPH, Director of Environmental Health Division, at (626) 430-5100 or [abellomo@ph.lacounty.gov](mailto:abellomo@ph.lacounty.gov).

WTF:SAS:MLM  
RM:hd

## Attachments

c: Executive Office, Board of Supervisors  
County Counsel  
Public Health

**INSPECTION TIME - TEMPORARY FOOD BOOTHS  
CERTIFIED FARMERS' MARKETS**

<b>Temporary Food Booth Fee Category</b>	<b>Number of Annual Inspections</b>	<b>Field Time Per Inspection<sup>a</sup> (Min)</b>	<b>Office Time Per Inspection<sup>b</sup> (Min)</b>	<b>Total Time/Yr. (Hrs)</b>
Food Preparation	4	30	25	3.7
Pre-packaged Food with Sampling	2	25	20	1.5
Pre-packaged Food	2	15	20	1.2

**Notes:**

- a - Includes a pro-rated portion (5 minutes) of the time required to drive to the location to conduct multiple inspections.
- b - Includes the initial review of the application, issuance of the permit, preparation to conduct the inspection, and completion of paperwork after the inspection.

**ATTACHMENT B**

**PERMIT FEES – TEMPORARY FOOD BOOTHS  
COMPARABLE CALIFORNIA JURISDICTIONS**

<b>Jurisdiction</b>	<b>Pre-Packaged<sup>a</sup></b>	<b>Unpackaged</b>	<b>Comments</b>
Alameda County	\$164 per quarter (\$656 per year)	\$333 per quarter (\$1,332 per year)	--
Kern County	\$90 per year	\$180 per year	+ \$75 for one time application fee
Long Beach	\$97 per quarter (\$242 per year)	\$125 per quarter (\$312 per year)	--
<b>LOS ANGELES COUNTY</b>	<b>\$143 per year \$182 per year for pre-packaged with sampling</b>	<b>\$441 per year</b>	<b>at single location</b>
Orange County	\$95 per year	\$153 per year	at single location
Riverside County	\$95 per quarter (\$380 per year)	\$177 per quarter (\$708 per year)	--
Sacramento County	\$282 per year	\$318 per year	one booth, multiple locations, Commissary required
San Bernardino County	\$280 per year	\$491 per year	one booth, multiple locations
San Diego County	\$250 per year	\$497 per year	one booth, multiple locations, Commissary required
San Francisco	\$250 per quarter+ \$38 (one-time application fee) (\$1,038 per year)	\$250 per quarter + \$99 (application fee) (\$1,099 per year)	--
Ventura County	Free for non-PHF <sup>b</sup> (PHF charged unpackaged rate)	\$104 per quarter (\$416 per year)	If booth has certified food handler, fee is reduced 50%.

**Note:**

a – Only Los Angeles County offers a permit for “pre-packaged with sampling”

b - Non-PHF means "non-potentially hazardous food"